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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,554	01/09/2006	Fabian Kollmann	D4700-00399	5082

8933 7590 06/12/2007
DUANE MORRIS, LLP
IP DEPARTMENT
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103-4196

EXAMINER

MAHONE, KRISTIE ANNETTE

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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06/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/538,554	Applicant(s) KOLLMANN ET AL.	
	Examiner Kristie A. Mahone	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 29 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 2,4 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5 and 7-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. PCT/EP2003/14099, filed on December 12, 2003, perfecting the claim of priority.

Claim Objections

2. Claim 32 is objected to because the limitation "the rod is curved" appears in line

2. However, a rod is not recited in any of the claims upon which it depends.

Presumably, claim 32 should depend from claim 25; and has been treated as such in for the purpose of the foregoing art rejections; i.e. claim 25 recites an arm configured as a rod.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,3,5,8,9,18, 21-25, 29, and 31-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Guenter et al (DE 10051452 A1).

Regarding claim 1, Guenter et al disclose a support for a detachable shower head comprising a mounting fixture (1), a wall mounting arm (2,3,5) jutting out of the mounting fixture, a shower head (not shown), and a holder (8,9) for the shower head by

which the shower head is detachably attachable to the arm in a vicinity of an end thereof that is opposite from the mounting fixture. (Figs 1-3, 9, Abstract). The wall mounting arm (5,2) is pivots on the mounting fixture (1) about an axis parallel to a surface of the wall on which the support is to be fixed; i.e. arm 2 rotates about bar 1. And, the holder (8,9) pivots on the arm about an axis on the arm (11) which is parallel to the pivot axis of the arm. (Figs 2, 3).

Regarding claim 3, note that the pivot axis of the holder is approximately orthogonal to the longitudinal axis of the arm. (See Fig. 2,3)

Regarding claim 5, note that the axis of the arm is in a horizontal plane. (See Fig. 2)

Regarding claims 8 and 9, the wall mounting arm is configured to form a fork, in since it has two extending tines (5). The holder (8) is arranged between the tines (5). (Fig. 1).

Regarding claim 18, the holder has a pair of jaws, defined by the terminal protrusions of seat portion 9, for engaging the shower head. (See Fig. 2)

Regarding claims 21-22, as schematically shown in Figure 2, the jaws (as identified supra), are connected by an arcuate portion, which constitutes a tensioning component, which tensions the jaws toward one another to allow the shower head to be held. (see Fig. 2).

Regarding claim 23, the tensioning component is configured such that contact between it a housing of the shower head takes place over an extended area; i.e. such as when the shower head inserted to the extent that it rest flush against seat portion 9.

Regarding claims 24 and 31, the tension component is configured such that a that it does not contact a housing or the showerhead and there is gap between it and a housing of the shower head, i.e. shower head is partially inserted, such that it rest upon the jaws and does not contact the tensioning component. . (See Fig. 1,2)

Regarding claims 25 and 32, note that the arm is configured in the form of a rod (as at 5), having a curve (as at 6). (Fig. 2).

Regarding claim 29, the tensioning component is configured to permit grasping of the arm while the shower head is attached.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guenter et al (as discussed supra)

Guenter differs in that the arm does not fork (split) approximately midway along its length claimed. However, it would have been an obvious matter of design choice to a person of ordinary skill in the art at the time the invention was made to have positioned the fork at the midpoint of the arm, since applicant has not disclosed that the positioning of the fork as such solves any stated problem or is for any particular

purpose. (note Disclosure at 6) Furthermore, it appears that Guenter's arm would perform equally well if the fork were at the midpoint thereof.

7. Claim 27 rejected under 35 U.S.C. 103(a) as being unpatentable over Guenter et al (as discussed supra) in view of Huppe (DE 19942853),

Guenter is silent with regard to the shape of the shower head housing. However, the Hupper reference teaches that shower heads having a disk shape housing to be old, and well known in the art. . (Figs 1, 2). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to having provided Guenter's assembly with a shower head having disk shaped housing in view of Hupper.

8. Claims 1,3,5,7,11-16-21,25,26, 28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fornara (5,855,348).

Regarding claim 1 , Fornara discloses a support (10) for a detachable shower head (e.g. 52), which comprises a mounting fixture (12), a wall mounting arm (14,47), jutting out of the mounting fixture, a shower head (52), and a holder (48) for the shower head, by which the shower head is "detachably attachable" to the wall mounting arm in a vicinity of an end thereof that is opposite from the mounting fixture. (Figs 1-3). Fornara specifies that the arm (14,47) pivots about axis *a*, which is parallel a surface of the wall P. Fornara further discloses that the holder (48) is "angularly adjustable" on the wall mounting arm (as at 47). (Col. 3, lines 32-42).

Although Fornara does not expressly state that the pivot axis of the holder (48) is parallel to the pivot axis of the arm (14,47), one of ordinary skill in the art would have recognized that for the holder to be angularly adjustable about the arm at 47, it would

rotate about an axis which would be parallel to the wall, and thus parallel to the axis of the arm (a); i.e. such axis passing through the centroid of portion 47, into the page from the view in Figure 1. And, the axis of the holder would be "on the wall mounting arm" inasmuch as applicant's is since it passes through the arm.

Regarding claims 3, 11, 16, and 30, note that the pivot axis of the holder (as identified supra) is approximately orthogonal to the longitudinal axis of the arm (parallel and through 14) (Figs 1-3). Furthermore, the holder axis intersects the housing (outer most portion) of the shower head 52 relatively "near" a centroid thereof.

Regarding claims 5 and 17, the arm (14/47) pivots on the mounting fixture (12) about axis *a*, which is horizontal, in a horizontal plane, and situated in a vicinity of the end of the arm that is coordinate with the mounting fixture. (Fig. 1).

Regarding claim 7, Fornara also discloses that wall mounting arm is pivots around axis *a* by about 180 degrees, as shown in Fig. 1 (Col. 3, 18-22). Fornara does not explicitly address the dimensions of pivot angle of the holder relative to the wall mounting arm, but notes that the holder is "angularly adjustable" about member 47. (Col. 3, lines 32-42). One of ordinary skill in the art would have recognized that configuring Fornara's support such that the maximum pivot angle of the holder at least equals the maximum pivot angle of the wall mounting arm (i.e. 180°) would enhance the support's suitability for the intended use of the user; i.e. more divergent array of jets. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified Fornara such that the maximum pivot angle of the holder at least equals the maximum pivot angle of the arm because such

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modification would have been considered a mere design consideration which fails to patentability distinguish over Fornara.

Regarding claims 12-13, the holder (48) is "configured to engage a location on a housing of the shower head provided for holding that is not recognizable as such based on its shape at that location." I.e. as at seat 50. Furthermore, the holder acts by means of an "interference fit" in a withdrawl/insertion direction; i.e. showerhead 52 is press-fit into seat 50 (Figs 2-3).

Regarding claim 14, the holder is configured to engage an outer perimeter of the shower head (as at 50).

Regarding claim 15, Fornara does not expressly disclose that the shower head (52) "remains functional following withdrawal from the holder", as claimed. However, Fornara indicates that the disclosed support can support a shower head "which can be of any per se known type" (Col 1. lines 57-58), including a mobile head that can be hand held and is connected to the water supply via a hose (Col. 1, 14-19; Fig. 3). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided Fornara with a shower head remains functional following withdrawal from the holder (in not already) to give the user the advantage of a mobile shower head and a fixed shower head; i.e. mobility and hands-free showering, respectively. (Col. 1 at 20-24).

Regarding claims 18 and 21, the holder has a seat (50) with two arcuate edges which defines a "jaws" (matching the outer counter of the showerhead/housing), for engaging the shower head (52). (Fig. 2,3).

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Regarding claims 19-20, the holder (48) engages the housing of the shower head (which includes the showerhead) at seat 50, which would contact the housing at two locations which are diametrically opposed; i.e. seat 50 engages the outer circumference of the shower head/housing (52). (See Figs 2,3).

Regarding claim 25, note that the arm is configured in the form of a rod; i.e. as at 14.

Regarding claim 26, the shower head (52) is a hand-held shower head, and the portion of the housing engaging the seat of the holder (50) is considered a "grip" since it could be gripped or grasped by a person. (Fig.1,3)

Regarding claim 28, Fornara shows hose (not labeled); leading to the mounting fixture (12) at Figure 3, which is "connected" to the mounting fixture (12), albeit indirectly via elements; i.e hose connected to the shower head (52), which is connected to the holder (48), which is connected to the arm (14,47,) which is in turn connected to the mounting fixture (12).

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1,5,8, 19-20, and 27, as amended, are provisionally rejected on the ground of nonstatutory double patenting over claims 1,12, and 14 of copending Application No.10/538,552. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: a support for a showerhead comprising a mounting fixture, arm, and a holder/receptacle for a shower head.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Response to Arguments

11. Applicant's arguments filed 3/29/07 have been fully considered. However, they are deemed not persuasive.

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12. With respect to Applicant's argument that Fornara does not teach or suggest the limitations of originally present claim 6, attention is directed to Figures 1-3. Firstly, it is noted that Applicant appears to have misread the Examiner's application of Fornara. Fornara's arm is defined by portions 14 and 47, while the holder is defined by portion 48. As explained in the prior Action, Fornara's "arm" (14 & 47) pivots about axis *a*, which is parallel to wall *P*. The "holder" (48) is disclosed to be "angularly adjustable" about portion 47 (of the arm). Although Fornara does not expressly state that the pivot axis of the holder is parallel to the pivot axis of the arm, one of ordinary skill in the art would have recognized that for the holder to be angularly adjustable about the arm at 47, it would rotate about an axis which is parallel to the wall (*P*), and parallel to the axis of the arm (*a*). (See Action at p. 10-11, re:claims 3,6,16). And with respect to the application of Fornara to the amended limitations of claim 1, see the art rejection at paragraph 11, *supra*.

13. Applicant's assertion that Larsson and Gransow each fail to teach or suggest amended claim 1, have been fully considered, but are now moot in view of the new grounds of rejection under 35 U.S.C. §§102(b),103(a) discussed *supra*.

Response to Amendment

14. Applicant's amendments to the Specification, Drawings, and pending claims, filed on 3/29/07 are sufficient to overcome the *formal* rejections and objections made in the prior Office Action (p 1-5). It is agreed that the Amendment does not introduce new

¹ Mailed 11/1/2006

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matter. And, as to the enablement rejection of claim 29, the claim is now understood to require a tensioning component configured to enable a person to grasp or grip the arm, as explained by Applicant at p. 19-20 of the Remarks.

15. However, Applicants amendment to the pending claims is insufficient to distinguish the claims invention from the art of record, or to overcome the rejections as cited above.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

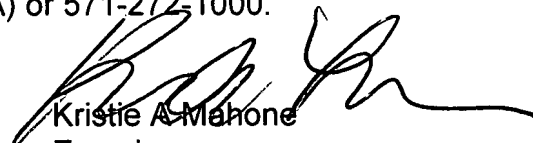
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

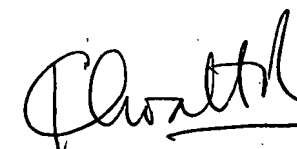
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie A. Mahone whose telephone number is (571) 272-3680. The examiner can normally be reached on Monday -Friday 8:30A.M-5 P.M..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Kristie A. Mahone
Examiner
Art Unit 3751


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